



Amendment No. 2  
to  
Contract No. MA 8600 NR150000004  
for  
Excursion Boat on Lady Bird Lake  
between  
Lone Star Riverboat, Inc.  
and the  
City of Austin, Texas

- 1.0 The City hereby accepts the price changes as indicated in Exhibit B - Revised 01/31/2018.
- 2.0 Delete Exhibit B in the contract signed on 07/17/2015 in its entirety and replace with the attached Exhibit B - Revised 01/31/2018.
- 3.0 The total contract amount is unchanged. The total Contract authorization is recapped below:

Term	Contract Amount for the Item	Total Contract Amount
Basic Term: 08/01/2015 – 07/31/2020	Revenue	Revenue
Amendment No. <del>1</del> Price Changes 02/09/2018 JD 2/20/18	Revenue	Revenue

- 4.0 MBE/WBE goals do not apply to this contract.
- 5.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 6.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

LONE STAR RIVERBOAT, INC.

Michael K Pearce  
Signature

Michael K Pearce  
Printed Name of Authorized Person

Owner  
Title

2-16-18  
Date

CITY OF AUSTIN

[Signature]  
Signature

JONATHAN DALCHAU  
Printed Name of Authorized Person

PROCUREMENT SPECIALIST IV  
Title

2/20/2018  
Date

**EXHIBIT B – REVISED 01/31/2018  
USE EXHIBIT**

**1. SCHEDULE**

Sightseeing Cruise: Weekends, March – Mid-December  
Moonlight Cruise: Fridays, March – Mid-December  
Bat Watching Cruise: Daily, March – October

**2. HOURS OF OPERATION**

Park Curfew Hour

**3. FEE SCHEDULE**

**Sightseeing Cruise and Bat Watching Cruise**

<b><u>Ticket Category</u></b>	<b><u>Price</u></b>
Adult	\$12.00
Senior Citizens (60 and over)	\$10.00
Children (12 and under)	\$7.00
Children (2 and under)	Free

**Moonlight Cruise**

\$12.00 per ticket

**Private Charter Without Catering**

Minimum number of people: 30      Maximum number of people: 150  
Two-hour Charter time: \$200 for each additional hour  
\$18.00 per person (30 - 80)      \$16.00 per person (81-150)  
Children 2 and under are no charge  
Gratuuity and sales tax are added to the per person and additional charter fees.

**4. PICK-UP AND DROP-OFF LOCATION**

West of the Hyatt Hotel, next to the South First Street Bridge, on the south shore of Lady Bird Lake.

**5. FLEET**

**The Lone Star** – 75-foot by 16 foot electric-powered paddle wheel riverboat

Maximum Capacity: 150 people

**The Little Star** - 32-foot pontoon cruiser

Maximum Capacity: 34 people

**The Southern Star** - 35-foot electric pontoon cruiser

Maximum Capacity: 60 people

**The Northern Star** - 35-foot electric pontoon cruiser

Maximum capacity: 60 people



Amendment No. 1  
to  
Contract MA 8600 NR150000004  
for  
Excursion Boat on Lady Bird Lake  
Between  
Lone Star Riverboat, Inc.  
and the  
City of Austin

- 1.0 The above referenced Contract is hereby amended as follows:
- 1.1 The last sentence in Section 2.9.6 is deleted and replaced with:  
The Contractor shall provide written certification to the City that ADA Standards have been met no later than February 28, 2017.
- 1.2 The first sentence of Section 2.9.7 is deleted and replaced with:  
*Dock Renovation.* The Contractor shall, no later than February 28, 2017, complete renovations of the existing City of Austin dock located behind the Four Seasons Hotel to ensure that it meets safety standards and is structurally capable for use to load and off-load passengers.
- 2.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced Contract.

Signature: \_\_\_\_\_

Printed Name:  
City of Austin

Date

8/21/16

Signature: \_\_\_\_\_

Printed Name:  
Authorized Representative

Date

8-15-16



**Financial and Administrative Service Department  
Purchasing Office**  
124 W. 8<sup>th</sup> St., Austin, Texas, 78701

July 20, 2015

Lone Star Riverboat  
Attn: Michael Pearce  
1400 West 41<sup>st</sup>. Street  
Austin, TX 78763

Dear Mike:

The Austin City Council approved the execution of a contract with your company for Excursion Boat Operation on Lady Bird Lake in accordance with the referenced solicitation.

Responsible Department:	PARD
Department Contact Person:	Kirk Scanlon
Department Contact Email Address:	Kirk.Scanlon@austintexas.gov
Department Contact Telephone:	512-974-6767
Project Name:	n/a
Contractor Name:	Lone Star Riverboat
Contract Number:	MA 8600 NR150000004
Contract Period:	8/1/2015 - 7/31/2020
Dollar Amount	n/a
Extension Options:	One 60-month extension option
Requisition Number:	RQM 8600 14102200021
Solicitation Number:	RFP TVN0048
Agenda Item Number:	36
Council Approval Date:	6/4/2015

Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please contact Kirk Scanlon, Contract Manager at 512-974-6767.

Sincerely,

Terry Nicholson  
Senior Buyer Specialist  
Purchasing Office  
Financial and Administrative Service Department

cc: K. Scanlon, PARD  
S. Brandt, FSD  
M. Walker, PARD



**CONTRACT BETWEEN THE CITY OF AUSTIN  
AND  
Lone Star Riverboat, Inc.  
For  
Excursion Boat Operation on Lady Bird Lake**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Lone Star Riverboat, Inc. ("Contractor"), having offices at 1400 West 41<sup>st</sup> Street, Austin, Texas 78763 for excursion boat operation on Lady Bird Lake ("Lake").

**SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES**

**1.1 Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.

**1.2 Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms for completing the additional services.

The Contractor shall fully and timely perform the tasks described herein in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

**1.3 Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, and shall promptly review reports submitted by the Contractor. The Contract Manager will give the Contractor timely feedback on performance, reports, and any request requiring the City's approval. The Contract Manager will provide the Contractor with updates and bulletins on events and other City activities that may affect Contractor operations.

**1.4 Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Michael Pearce, Phone: (512) 327-1388, Email Address: captmike@austin.rr.com. The City's Contract Manager for the engagement shall be Kirk Scanlon, Phone: (512) 974-6767, Email Address: Kirk.Scanlon@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

**SECTION 2. SCOPE OF WORK**

The Contractor shall operate an excursion boat concession ("Concession") on Lady Bird Lake in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations. The purpose of the Concession is to provide entertainment and recreation, with an emphasis on exceptional experience for patrons; expanded services; minimal environmental impact; public safety; operational efficiency; safety; and compliance with the American Disabilities Act.

Without the financial support, compensation, or investment (direct or in-kind) from the City, the Contractor shall perform each of the tasks below:

**2.1 Location.** The City grants the Contractor the right to manage and operate excursion boat services on the south side of Lady Bird Lake immediately east of Drake Bridge (S. 1<sup>st</sup> Street Bridge) at 101 South First Street. This area, the "Premises", is delineated in Exhibit A and includes the dock, parkland, and affected right of way.

2.2 Services. The Contractor shall provide the public with safe, excursion boat operations that offer options such as sightseeing, dinner cruises, entertainment, special events, and private chartered events on the Lake.

2.3 Fees, Schedule, and Hours of Operations. The Contractor shall display its hours of operations, schedules, and fees in a conspicuous location on the Premises and on the concession website. Fees displayed shall include ticket prices and all services and items for sale. The design and location of this posting is subject to the approval of the City Contract Manager. The Contractor shall adhere to the fees, schedule, and hours of operation described in Exhibit B, Use Exhibit, and may adjust the schedule and hours of operation with prior written approval from the City Contract Manager.

2.4 Pick-up and Drop-off Locations. The Contractor shall pick up and drop off patrons as indicated in Exhibit A. Upon completion of improvements described in Sections 2.9.6 and 2.9.7, the Contractor may pick up and drop off patrons at additional locations approved in writing by the City.

2.5 Customer Service. The Contractor shall employ such personnel as will assure a high standard of customer service to the public. The Contractor shall provide to the City a written process by which it will obtain and respond to customer comments no later than 90 days from the Effective Date. Methods for soliciting customer comment may include a complaint box, website, email address, or Quick Response Code. The Contractor shall notify the City Contract Manager via email within 24 hours of receipt of any complaint.

2.6 Utilities. The Contractor shall secure and pay for any required utilities necessary for management, maintenance, and operation of the Concession.

2.7 Fleet. The Contractor shall provide and maintain excursion boats ("Fleet").

2.7.1 The Contractor shall ensure that the Fleet meets all applicable Federal, State and local codes and laws and be of quality construction and in excellent mechanical condition. The Contractor is solely responsible for obtaining any permits, variances, or other requirements necessary for meeting applicable Federal, State, and local codes and laws.

2.7.2 The Contractor is responsible for all repairs and maintenance of the Fleet.

2.7.3 The Fleet must be aesthetically pleasing and symbolically connect to the history of the Colorado River and City of Austin.

2.7.4 The Fleet described in Exhibit B is authorized under this Contract. The Contractor may modify the Fleet with prior written agreement from the City Contract Manager.

## 2.8 Equipment

2.8.1 The Contractor shall acquire any and all equipment and furnishings for the maintenance, management, and operation of the Concession.

2.8.2 The Contractor is responsible for all repairs and maintenance of equipment and furnishings used for the Concession.

2.8.3 All furnishings and equipment shall be of quality material and construction and attractive in design and provide the highest level of customer service, accessibility, and affordability for patrons.

2.8.4 *Floating Dock.* The Contractor shall, no later than one year from the Effective Date, provide a floating, movable dock to be used to safely pick up and drop off Concession patrons along the Lake. The Floating Dock shall become property of the City upon termination or expiration of the Contract.

2.8.5 The City shall be under no obligation but reserves the right of first refusal to purchase floating docks from the Contractor at fair market value as determined by an independent third party mutually agreed upon by the City and Contractor.

## 2.9 Capital Repairs and Improvements

2.9.1 With the prior written approval of the City Contract Manager, the Contractor may make capital repairs and improvements to infrastructure on the Premises, such as docks, railings, ramps, gates, shade awnings, walkways, walls, retaining walls, light standards, built structures and other assets built into or tied to Park infrastructure.

2.9.2 Capital repairs or improvements shall be done at the sole expense of the Contractor.

2.9.3 Upon expiration or termination of the Contract, repairs and/or improvements to fixed assets, including but not limited to, all concrete flatwork, railings, other infrastructure for ADA Compliance as described in Section 2.9.6, and Dock Renovation as described in Section 2.9.7, shall become property of the City.

2.9.4 The City may require the Contractor to restore the Premises to its original condition at the Contractor's expense upon termination or expiration of the Contract.

2.9.5 No permanent shade structures will be permitted on any of the docks.

2.9.6 *ADA Compliance.* The Contractor, at its sole expense, shall make any and all structural alterations, repairs, or improvements to ensure that the Premises are in compliance with the Americans with Disabilities Act (ADA) Accessibility Guidelines. This includes but is not limited to the construction of an ADA-compliant ramp with associated paths. The Contractor shall submit to the City a project plan and timeline for City approval prior to beginning any work. The Contractor shall provide written certification to the City that ADA Standards have been met no later than one year from the Effective Date.

2.9.7 *Dock Renovation.* The Contractor shall, no later than one year from the Effective Date, complete renovations of the existing City of Austin dock located behind the Four Seasons Hotel to ensure that it meets safety standards and is structurally capable for use to load and off-load passengers. The Contractor shall submit to the City a project plan and timeline for City approval prior to beginning any work on the dock. The Contractor shall obtain any permit or other authorization required for renovation or use of the dock. The dock shall remain the property of the City upon termination or expiration of the Contract.

## 2.10 Permits, Licenses, and Other Required Documents

2.10.1 The Contractor assumes all responsibility for and shall obtain any and all licenses, clearances, permits, variances, certificates, manifests and any other requirements for the Contractor's lawful operation, use, management, maintenance and occupancy of the Concession. The Contractor shall fully comply with all laws, rules, regulations and orders of local, state and federal governmental authorities which in any way relate to the Premises, and the Contractor shall pay any fees associated with such compliance.

2.10.2 Permits may include but are not limited to (a) food and beverages, (b) merchandise related to, or consistent with the Concession, (c) goods and services in furtherance of the Concession, and (d) upon approval by the City, alcoholic beverages.

## 2.11 Environmental Stewardship

2.11.1 The Contractor shall promote environmental stewardship of the Lake and prohibit any activities that would lead to its degradation.

2.11.2 The Contractor shall prohibit the dumping of refuse into the Lake, swimming in the Lake, and any harm to flora or fauna within or adjacent to the Lake.

2.11.3 The Contractor shall not permit glass on the Premises, except during a catered event, at which time the Contractor shall ensure that glass bottles remain at the bar.

2.11.4 The Contractor shall implement a recycling program throughout the term of the Contract. The Contractor shall provide separate containers to collect recyclables such as glass, paper, and aluminum. The Contractor shall not use Styrofoam containers to service food.

2.11.5 The Contractor shall maintain the Premises reasonably free from rubbish, filth and refuse and shall install and maintain an appropriate number of trash and recycling receptacles on the Premises. The Contractor, at its sole expense, shall manage the removal of all solid waste from the Premises.

## 2.12 Promotions

2.12.1 The Contractor shall provide draft copies of any significant public relations campaign materials to the City Contract Manager for approval no later than five business days before release.



2.12.2 The Contractor shall notify the City of any media inquiries with potential material effect on the Concession.

2.12.3 The Contractor is permitted and encouraged to engage in advertising, solicitation, and promotional activities utilize the internet and social media to realize the full potential of the Concession's use.

2.12.4 The Contractor shall install signage on the Premises to promote the Concession.

2.12.5 The Contractor shall remove signage upon termination or expiration of the Contract.

**2.13 Prohibited Activities**

2.13.1 Smoking is prohibited on the Premises, and the Contractor shall comply with the City's Smoking in Public Places Ordinance.

2.13.2 The Contractor shall not maintain, commit, or permit any nuisance on the Premises.

2.13.3 The Contractor shall not use any part of the Premises or operate the Concession for any use or purpose that violates any applicable law, regulation, or ordinance of the United States, the State of Texas, the County of Travis, or the City of Austin, or other lawful authority with jurisdiction over the Premises.

**2.14 Safety and Security**

2.14.1 The Contractor shall install signage to promote safe use of the Premises.

2.14.2 The Contractor shall be responsible for security of the dock, boats and other assets on the Premises. The Contractor shall implement preventative measures against vagrancy, vandalism, arson, or other illegal acts. The Contractor shall maintain reasonable physical security controls on the Premises.

2.14.3 The Contractor shall adhere to a safety and security plan that includes, but is not limited to detailed action plans for staff and management in the event of an accident or injury to Concession patrons or any citizen in the vicinity of the Premises. The Contractor shall include in its safety and security plan detailed actions in the event of damage to public or private property by the Contractor. The Contractor shall maintain order on the boat and control patron behavior to minimize risk of damage to public or private property and injury to staff or customers.

2.14.4 The Contractor shall maintain an updated Safety Plan on file with the City Contract Manager. The Contractor's current Safety Plan is in Exhibit D of the Contract.

2.14.5 Within 10 days of receipt of notice of the occurrence of any complaints or reports of violations of the law that have occurred on the Premises and that are significant in nature and that have a material effect on the operations of the Concession, the Contractor shall notify the City of such occurrence. The Contractor shall maintain for review by the City upon reasonable notice, information as reasonably required by the City to satisfy the City's responsibilities, including information regarding injuries and unusual incidents on the Premises, and regarding security measures and safety programs (including recommendations for changes for such measures/programs) on the Premises.

**2.15 Reporting**

2.15.1 Monthly Reports. The Contractor shall submit monthly reports to the City no later than the tenth calendar day of each month with the monthly payment. If the due date falls on a weekend or holiday observed by the City, the Monthly Report will be due the following business day. Monthly Reports shall include:

2.15.1.1 Revenue Report. The Contractor shall report on monthly concession revenue, sales tax, gratuities, expenditures, and commission to the City according to the Monthly Sales Report in Exhibit E of this Contract. The Contractor shall also provide cash register tapes or other valid form of sales documentation for the reporting month.

2.15.1.2 Activities and Attendance. The Contractor shall report on ticket sales, charters, and private parties according to the Monthly Sales Report in Exhibit E of this Contract.

2.15.1.3 Licenses, Permits, etc. The Contractor shall include in Monthly Reports copies of all documents, such as licenses, permits, and manifests to substantiate compliance with Section 2.10.

2.15.2 Annual Reports. The Contractor shall submit to the City the following:

2.15.2.1 Inventory of the types and sizes of Personal Flotation Devices, including age and condition. This is due annually to the City Contract Manager on the Contract anniversary date.

2.15.2.2 Copy of Internal Revenue Service Form 1040, Schedule C (Statement of Operations) and all other applicable federal tax forms, including extension forms pertaining specifically to the Concession. This is due annually to the City Contract Manager no later than seven business days after filing with the Internal Revenue Service.

2.15.3 Other Reports.

2.15.3.1 The Contractor shall submit upon request the following financial reports related to the obligations of this Contract: income statement; balance sheet; cash flow statement; and bank statements. The Contractor shall submit via email monthly reports within 10 business days of the City's written request.

2.15.3.2 The Contractor shall submit Incident Reports via email no later than two business days from the time of the incident. Incident Reports should adhere to the form in Exhibit F of this Contract.

2.15.4 The Contractor shall promptly report to the City Contract Manager any problems encountered that may delay or threaten service provision services during the operation of the excursion boat concession.

### SECTION 3. COMMISSION

3.1 The term, "Gross Revenue", is defined as any and all revenue from sales transactions paid to and/or payable to the Contractor or any of its subcontractors in relation to the Contractor's operation of the Concession, less state sales tax and gratuities.

3.2 **Initial Term.** During the initial term of the Contract, the Contractor shall pay the City the sum of \$18,000 annually. This sum shall be paid to the City in monthly installments of \$1,500.

In addition to monthly installments of \$1,500, the Contractor shall pay the City an annual lump sum equal to 9% of annual Gross Revenue greater than \$200,000. The annual lump sum payment will be due to the City no later than February 1<sup>st</sup> of the following year.

3.3 **Option Period.** If the Contract is extended for the 60 month option period described in Section 4.1, the Contractor shall pay the City the sum of \$20,000 annually, payable in monthly installments of \$1,667.

In addition to monthly installments of \$1,667, the Contractor shall pay the City an annual lump sum of 10% of annual Gross Revenue greater than \$200,000. The annual lump sum payment will be due to the City no later than February 1st of the following year.

3.4 The Contractor shall make payment in the form of a check payable to the City of Austin Parks and Recreation Department and mailed to:

City of Austin  
Parks and Recreation Department  
ATTN: Kirk Scanlon  
200 South Lamar Blvd.  
Austin, TX 78704

### SECTION 4. TERM AND TERMINATION



4.1 **Term of Contract.** This Contract shall become effective on August 1, 2015, and shall remain in effect for an initial term of 60 months and may be extended thereafter for up to one additional 60 month option period, subject to the approval of the Contractor and the City Purchasing Officer or his designee.

4.1.1 Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary (not to exceed 120 calendar days unless mutually agreed on in writing).

4.2 **Right To Assurance.** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

4.3 **Default.** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

4.4 **Termination For Cause.** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

4.5 **Termination Without Cause.** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

4.6 **Fraud.** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

## **SECTION 5. OTHER DELIVERABLES**

5.1 **Insurance:** The following insurance requirements apply.

5.1.1 **General Requirements.**



5.1.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Contract and during any warranty period.

5.1.1.2 The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to Contract execution and within fourteen (14) calendar days after written request from the City.

5.1.1.3 The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.

5.1.1.4 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

5.1.1.5 The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

5.1.1.6 The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.

5.1.1.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall be mailed to the following address:

City of Austin  
Purchasing Office  
P. O. Box 1088  
Austin, Texas 78767

5.1.1.8 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

5.1.1.9 If insurance policies are not written for amounts specified in Paragraph 5.1.2, Specific Coverage Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

5.1.1.10 The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

5.1.1.11 The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

5.1.1.12 The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

5.1.1.13 The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

5.1.1.14 The Contractor shall endeavor to provide the City thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

5.1.2 **Specific Coverage Requirements.** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

5.1.2.1 **Liability Insurance.**

5.1.2.1.1 *Commercial General Liability Insurance.* The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

5.1.2.1.1.1 Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.

5.1.2.1.1.2 Contractor/Subcontracted Work.

5.1.2.1.1.3 Products/Completed Operations Liability for the duration of the warranty period.

5.1.2.1.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.

5.1.2.1.1.5 Thirty (30) calendar days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.

5.1.2.1.1.6 The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

5.1.2.1.2 *Watercraft Liability.* The Contractor shall provide watercraft liability insurance with a minimum combined single limit of \$500,000 per accident. Coverage must apply for bodily injury and property damage arising out of the maintenance, use, and operation of any watercraft and shall contain the following endorsements in favor of the City of Austin:

5.1.2.1.2.1 Waiver of Subrogation.

5.1.2.1.2.2 Thirty (30) calendar days Notice of Cancellation.

5.1.2.1.2.3 The City of Austin listed as an additional insured.

5.1.2.1.3 Marine General Liability coverage may be provided in place of the General Liability and Watercraft Liability policies if the Marine General Liability policy contains equivalent coverage terms and conditions. The Marine General Liability policy shall provide a minimum limit of liability of \$1,000,000 per occurrence and shall contain the following endorsements in favor of the City of Austin:

5.1.2.1.3.1 Waiver of Subrogation.

5.1.2.1.3.2 Thirty (30) calendar days Notice of Cancellation.

5.1.2.1.3.3 The City of Austin listed as an additional insured.

5.1.2.2 **Business Automobile Liability Insurance.** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements:

5.1.2.2.1 Waiver of Subrogation, Endorsement CA0444, or equivalent coverage.

5.1.2.2.2 Thirty (30) calendar days Notice of Cancellation, Endorsement CA0244, or equivalent coverage.

5.1.2.2.3 The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

5.1.2.3 **Worker's Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

5.1.2.3.1 The Contractor's policy shall apply to the State of Texas.

5.1.2.3.2 Waiver of Subrogation, Form WC420304, or equivalent coverage.

5.1.2.3.3 Thirty (30) calendar days Notice of Cancellation, Form WC420601, or equivalent coverage.

## 5.2 **Equal Opportunity.**

5.2.1 **Equal Employment Opportunity.** No Contractor or Contractor's agent shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Bid submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Contractor has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. The Contractor shall sign and return the Non-Discrimination Certification attached hereto as Exhibit G. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

5.2.2 **Americans With Disabilities Act (ADA) Compliance.** No Contractor, or Contractor's agent shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

5.3 **Acceptance of Incomplete or Non-Conforming Deliverables.** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

## 5.4 **Delays.**

5.4.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.



5.4.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

- 5.5 **Rights to Proposal and Contractual Material.** All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.

## SECTION 6. WARRANTIES

6.1 **Warranty – Services.** The Contractor warrants and represents that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

6.1.1 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

6.1.2 Unless otherwise specified in the Contract, the warranty period shall be at least one year from the acceptance date. If during the warranty period, one or more of the warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

6.1.3 If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

## SECTION 7. MISCELLANEOUS

7.1 **Access.** The City reserves the right to access all parts of the Premises 24 hours a day, 365 days a year. The City will notify and coordinate with the Contractor as reasonably possible.

7.2 **Place and Condition of Work.** The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the Contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

7.3 **Park Events and Programming.** The Premises is located on public parkland. The City has entered into contractual relationships with Third Parties for the promotion and execution of events such as festivals, concerts

and other programming on adjacent parkland to the Premises. These events may pose conflicts to the operations of the concessions (parking, access, etc). The Contractor shall take responsibility to coordinate concession activities and operations with organizers, promoters, and others to mitigate any conflicts. Concession operations shall be subservient to the operational needs of event promoters.

#### 7.4 **Workforce.**

7.4.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract with a high standard of customer service to the public.

7.4.2 Contractor shall provide a sufficient number of trained employees to perform under this Contract to the City's satisfaction.

7.4.3 The Contractor's staff shall have the experience, skills, training, and certifications to comply with all applicable City, State, and Federal laws.

7.4.4 The Contractor shall ensure that all personnel who have direct contact with vulnerable populations, pass a criminal background check as required by the Department's policies.

7.4.5 The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:

7.4.5.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Contract; and

7.4.5.2 use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

7.4.6 If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

7.5 **Compliance with Health, Safety, and Environmental Regulations.** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

7.6 **Inspections.** The City shall conduct periodic and regular inspections as may be required to insure that fire, safety, health, maintenance and sanitation regulations and other provisions contained in this Contract or in the City Code are being adhered to by the Contractor, and may immediately enter any area if required to assess or respond to an event or condition that in the City's opinion creates imminent danger, injury or damage to person or property. The City shall notify the Contractor of its findings, specifying any items needing attention. The Contractor agrees to grant the City the right to access the Concession for inspections during normal business hours, and after hours, with prior notice as may be necessary. Failure to conduct any inspections as may be required shall not operate as a waiver of the City's right to conduct these inspections and shall not be considered a default of the terms of this Contract.

7.7 **Fire Code Inspections.** The Contractor shall permit the City's Fire Marshal or his or her authorized agents to inspect the Premises, and the Contractor and City will comply with all requirements of the Fire Marshal or his or her authorized agents that are necessary to bring the Premises into compliance with the City Fire Code and Building Code provisions regarding fire safety. The Contractor shall maintain in proper condition, accessible fire



extinguishers of a number and type approved by the Fire Marshal or his or her authorized agents for the particular hazard involved.

**7.8 Significant Event.** The Contractor shall immediately notify the City's Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to the Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

- 7.8.1 disposal of major assets;
- 7.8.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;
- 7.8.3 any significant termination or addition of provider contracts;
- 7.8.4 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;
- 7.8.5 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this Contract;
- 7.8.6 reorganization, reduction and/or relocation in key personnel;
- 7.8.7 known or anticipated sale, merger, or acquisition;
- 7.8.8 known, planned or anticipated stock sales;
- 7.8.9 any litigation against the Contractor; or
- 7.8.10 significant change in market share or product focus.

**7.9 Audit, Accounting, and Record Keeping.**

**7.9.1 Right to Audit.** The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract, including cash register tapes. The Contractor shall retain all such records for a period of three (3) years after termination or expiration of this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer.

7.9.1.1 The Contractor shall include this provision in all subcontractor agreements entered into in connection with this Contract.

**7.9.2 Independent Audit.** The Contractor shall, on an annual basis and at its sole expense, engage a Certified Public Accounting firm to perform an independent, certified audit of the Contractor's operations. The Contractor may define the scope of the audit and recommend a Certified Public Accounting firm to conduct the audit. Scope of audit and accounting firm will be subject to the City's prior approval. The Contractor shall ensure that the audit report/statements are submitted directly to the City by the auditing firm.

**7.9.3** Contractor shall meet the following accounting and record keeping requirements. Contractor shall:

**7.9.4** maintain a separate accounting and record keeping for its operations including alcohol operations, in accordance with Generally Accepted Accounting Principles (GAAP).



7.9.5 maintain full and accurate records of all operations and receipts, which records shall be in accordance with GAAP.

7.9.6 maintain itemized records of all costs incurred and paid, including original invoices.

7.9.7 pay all costs and expenses connected with its operations when due.

7.9.8 maintain all personnel files, payroll summaries, copies of payroll tax returns, Account deposit receipts and bank statements.

7.10 Records must be kept on City facilities or at some other location mutually agreeable to the parties.

7.11 **Taxes.** Contractor agrees that it will pay any and all lawful taxes upon personal property and improvements and all other lawful taxes levied against the property, income, and/or Contractor Equipment, or operations of Contractor. Delinquency in paying any such tax may be cause for termination of this Contract. Reference Tax Forms under Reporting section.

7.12 **Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

### 7.13 **Indemnity.**

#### 7.13.1 Definitions:

7.13.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

7.13.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;

7.13.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

7.13.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

7.13.2 **THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

7.14 **Claims.** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse effect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent

to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2<sup>nd</sup> Street, 4<sup>th</sup> Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

**7.15 Notices.** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:

City of Austin, Purchasing Office

ATTN: Sandy Brandt, Contract Administrator

P O Box 1088

Austin, TX 78767

To the Contractor:

Lone Star Riverboat, Inc.

ATTN: Michael Pearce, Contract Manager

P.O. Box 5874

Austin, TX 78756

**7.16 Confidentiality.** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

**7.17 Advertising.** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

**7.18 No Contingent Fees.** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

**7.19 Gratuities.** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.



**7.20 Prohibition Against Personal Interest in Contracts.** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

**7.21 Independent Contractor.** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

**7.22 Assignment-Delegation.** The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

**7.23 Waiver.** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

**7.24 Modifications.** The Contract can be modified or amended only in writing signed by both parties. No pre-printed or similar terms on any Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

**7.25 Interpretation.** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

**7.26 Dispute Resolution.**

7.26.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

7.26.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to

act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

## **7.27 Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program.**

7.27.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.

7.27.2 The City of Austin has determined that no goals are appropriate for this Contract. **Even though no goals have been established for this Contract, the Contractor is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.**

7.27.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

## **7.28 Subcontractors.**

7.28.1 If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan, the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

7.28.2 Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:

7.28.2.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract.

7.28.2.2 prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such

further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

7.28.2.3 require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

7.28.2.4 require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

7.28.2.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

7.28.3 The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

7.28.4 The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

7.29 **Jurisdiction And Venue.** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

7.30 **Invalidity.** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

7.31 **Holidays.** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November



Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

**7.32 Survivability of Obligations.** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

**7.33 Non-Suspension or Debarment Certification.** The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

**7.34 Incorporation of Documents.** Section 0100, Standard Purchase Definitions, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address: <http://www.austintexas.gov/sites/default/files/files/Finance/Purchasing/standard-purchase-definitions.pdf>.

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

LONE STAR RIVERBOAT, INC.

By: Michael K. Pearce  
Signature

Name: Michael K. Pearce  
Printed Name

Title: President/owner

Date: 7-17-15

CITY OF AUSTIN

By: [Signature]  
Signature

Name: Karyn Nichols  
Printed Name

Title: Sr. Buyer Spec

Date: 7/17/15



**List of Exhibits**

Exhibit A	Map of Concession Area or Premises
Exhibit B	Use Exhibit
Exhibit C	Monthly Concession Revenue Report
Exhibit D	Safety Plan
Exhibit E	Activity and Attendance Report
Exhibit F	Incident Report
Exhibit G	Non Discrimination Certification

**EXHIBIT G**  
**City of Austin, Texas**  
**EQUAL EMPLOYMENT/FAIR HOUSING OFFICE**  
**NON-DISCRIMINATION CERTIFICATION**

**City of Austin, Texas**  
**Human Rights Commission**

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

**Sec. 4-2 Discriminatory Employment Practices Prohibited.** As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B) (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below.

**City of Austin**  
**Minimum Standard Non-Discrimination in Employment Policy:**

*As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.*

*The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment,*

recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

**Sanctions:**

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

**Term:**

The Contractor agrees that this Section 0800 Non-Discrimination Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payments, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 17<sup>th</sup> day of July, 2015

CONTRACTOR

Authorized  
Signature

Title

Lone Star Riverboat, Inc  
Michael K. Pearce  
President/owner





ADDENDUM  
PURCHASING OFFICE  
CITY OF AUSTIN, TEXAS

Request for Proposal (RFP): TVN0048 ADDENDUM NO. 1 DATE OF ADDENDUM: November 14, 2014

This addendum is to incorporate changes to the above referenced solicitation:

Clarifications:

1. **Authorized Contact for contractual and technical issues added the following person :**

**Additional Authorized Contract:** Georgia L. Billela  
Buyer II  
512-972-2939  
[georgia.billela@austintexas.gov](mailto:georgia.billela@austintexas.gov)

2. **Pre-bid questions:**

(Q1) Will the Parks Department or City be working with vendor to obtain the permit for site plan modification?

(A1) **The City will assist Proposer in the submission and approval process of a site plan modifying the concession area.**

(Q2) Vendor at the time of submission is only required to provide plan for ADA accessible, is this correct or does it have to be in place?

(A2) **Proposals should clearly demonstrate modifications to the concession area to:**

1. **Design and construct an accessible route to the concession from available parking at Auditorium Shores;**
  - a. **The City may consider altering the parking alignment to ensure compliance with the American Disability Act.**
2. **Mitigate any potential conflict between concession maintenance and operations and trail, park, and event use.**
3. **Show how concession operations are integrated into site modification such as load-in, load-out, customer parking, customer access via bicycle or trail, and any other information relevant to the operation of the concession in parkland at the site.**

(Q3) Is there a plan that the City is already working on for ADA accessible sidewalks?

(A3) **The City has attached available survey data for the site as well a conceptual plan for ADA accessible sidewalk developed by the Department for the Proposers consideration. See Attachment A**

3. The clarification of the closing time and date of the above referenced Request for Proposal is **2:00 PM on Thursday December 4, 2014**. Bids will be accepted until 2:00 PM on December 4, 2014.

4. The language on the Section 0400 paragraph 4 should read as follows:

**PAYMENT:** (reference paragraphs 12 and 13 in Section 0300)

Contractor shall make payment in the form of a check payable to the City of Austin Parks and Recreation Department on a quarterly basis, regardless of the amount.

Checks shall be made out to the City of Austin Parks and Recreation Department and mailed to the respective contact/address listed below:

	City of Austin
Department	Austin Parks and Recreation Department
Attn:	Michelle Walker
Address	200 S. Lamar Blvd.
City, State Zip Code	Austin, Texas 78704

5. The Pre-Bid sign in log is attached.

All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, Addendum #1 is hereby incorporated and made a part of the above referenced Solicitation.

APPROVED BY:

  
Terry Nicholson,  
Senior Buyer Specialist  
Purchasing Office, 512-974-2995

ACKNOWLEDGED BY:

  11-16-14  
SUPPLIER AUTHORIZED SIGNATURE DATE

RETURN ONE (1) COPY OF THIS ADDENDUM TO THE PURCHASING OFFICE, CITY OF AUSTIN, WITH PROPOSAL OR PRIOR TO BID OPENING. FAILURE TO DO SO MAY CONSTITUTE GROUNDS FOR REJECTION OF YOUR OFFER.

If I am awarded the contract I agree to continue complying with the City's MBE/WBE Procurement Program Ordinance and Rules including contacting SMBR if any subcontracting is later identified.

The undersigned, by his/her signature, represents that he/she is submitting a binding offer and is authorized to bind the respondent to fully comply with the solicitation document contained herein.  
The Respondent, by submitting and signing below, acknowledges that he/she has received and read the entire document packet sections defined above including all documents incorporated by reference, and agrees to be bound by the terms therein.

Company Name: Lone Star Riverboat, Inc.

Company Address: 1400 West 41st Street

City, State, Zip: Austin, Texas 78756

Federal Tax ID No. [REDACTED]

Printed Name of Officer or Authorized Representative: Mike Pearce

Title: President

Signature of Officer or Authorized Representative: Mike Pearce

Date: 11-11-14

Email Address: captmike@austin.rr.com

Phone Number: 512-327-1388

**\* Proposal response must be submitted with this Offer sheet to be considered for award**



**CITY OF AUSTIN  
PURCHASING OFFICE  
STANDARD PURCHASE TERMS AND CONDITIONS**

By submitting an Offer in response to the Solicitation, the Contractor agrees that the Contract shall be governed by the following terms and conditions. Unless otherwise specified in the Contract, Sections 3, 4, 5, 6, 7, 8, 20, 21, and 36 shall apply only to a Solicitation to purchase Goods, and Sections 9, 10, 11 and 22 shall apply only to a Solicitation to purchase Services to be performed principally at the City's premises or on public rights-of-way.

1. **CONTRACTOR'S OBLIGATIONS**. The Contractor shall fully and timely provide all Deliverables described in the Solicitation and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.
2. **EFFECTIVE DATE/TERM**. Unless otherwise specified in the Solicitation, this Contract shall be effective as of the date the contract is signed by the City, and shall continue in effect until all obligations are performed in accordance with the Contract.
3. **CONTRACTOR TO PACKAGE DELIVERABLES**: The Contractor will package Deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price. Unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.
4. **SHIPMENT UNDER RESERVATION PROHIBITED**: The Contractor is not authorized to ship the Deliverables under reservation and no tender of a bill of lading will operate as a tender of Deliverables.
5. **TITLE & RISK OF LOSS**: Title to and risk of loss of the Deliverables shall pass to the City only when the City actually receives and accepts the Deliverables.
6. **DELIVERY TERMS AND TRANSPORTATION CHARGES**: Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified in the Supplemental Terms and Conditions. Unless otherwise stated in the Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the Deliverables. The place of delivery shall be that set forth in the block of the purchase order or purchase release entitled "Receiving Agency".
7. **RIGHT OF INSPECTION AND REJECTION**: The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the Deliverables at delivery before accepting them, and to reject defective or non-conforming Deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the Deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.
8. **NO REPLACEMENT OF DEFECTIVE TENDER**: Every tender or delivery of Deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.
9. **PLACE AND CONDITION OF WORK**: The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the contract. The Contractor hereby

**CITY OF AUSTIN  
PURCHASING OFFICE  
STANDARD PURCHASE TERMS AND CONDITIONS**

releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

**10. WORKFORCE**

- A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
- B. The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property .
  - i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or
  - ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
- C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

- 11. COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS:** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

**12. INVOICES:**

- A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.
- B. **Proper Invoices must include a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.
- C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and Deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.
- D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.
- E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

**CITY OF AUSTIN  
PURCHASING OFFICE  
STANDARD PURCHASE TERMS AND CONDITIONS**

**13. PAYMENT:**

- A. All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the Deliverables or of the invoice, whichever is later.
- B. **If payment is not timely made, (per paragraph A), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**
- C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.
- D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
  - i. delivery of defective or non-conforming Deliverables by the Contractor;
  - ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
  - iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
  - iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
  - v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
  - vi. failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
  - vii. failure of the Contractor to comply with any material provision of the Contract Documents.
- E. Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- F. Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.
- G. The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any Deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

- 14. TRAVEL EXPENSES:** All travel, lodging and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Solicitation will be reviewed against the City's Travel Policy as published and maintained by the City's Controller's Office and the Current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

<http://www.gsa.gov/portal/category/21287>



**CITY OF AUSTIN  
PURCHASING OFFICE  
STANDARD PURCHASE TERMS AND CONDITIONS**

No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of detailed itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulations.

**15. FINAL PAYMENT AND CLOSE-OUT:**

- A. If an MBE/WBE Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Project manager or Contract manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.
- B. The making and acceptance of final payment will constitute:
  - i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and
  - ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

**16. SPECIAL TOOLS & TEST EQUIPMENT:** If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

**17. RIGHT TO AUDIT:**

- A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.
- B. The Contractor shall include section a. above in all subcontractor agreements entered into in connection with this Contract.

**18. SUBCONTRACTORS:**

- A. If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective Deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

**CITY OF AUSTIN  
PURCHASING OFFICE  
STANDARD PURCHASE TERMS AND CONDITIONS**

- B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:
- i. require that all Deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
  - ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
  - iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
  - iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
  - v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
- C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

19. **WARRANTY-PRICE:**

- A. The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like Deliverables under similar terms of purchase.
- B. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.
- C. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like Deliverables under similar terms of purchase.

20. **WARRANTY – TITLE:** The Contractor warrants that it has good and indefeasible title to all Deliverables furnished under the Contract, and that the Deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the Deliverables.

21. **WARRANTY – DELIVERABLES:** The Contractor warrants and represents that all Deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the Deliverables shall be new or recycled merchandise, and not used or reconditioned.

- A. Recycled Deliverables shall be clearly identified as such.

**CITY OF AUSTIN  
PURCHASING OFFICE  
STANDARD PURCHASE TERMS AND CONDITIONS**

- B. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.
  - C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the Deliverables or from the date of acceptance of any replacement Deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming Deliverables, or replace the non-conforming Deliverables with fully conforming Deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.
  - D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming Deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of Deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming Deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such Deliverables from another source.
  - E. If the Contractor is not the manufacturer, and the Deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.
22. **WARRANTY – SERVICES:** The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.
- A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
  - B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.
  - C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.
23. **ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES:** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming Deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming Deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming Deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.
24. **RIGHT TO ASSURANCE:** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event



**CITY OF AUSTIN  
PURCHASING OFFICE  
STANDARD PURCHASE TERMS AND CONDITIONS**

that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

25. **STOP WORK NOTICE:** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.
26. **DEFAULT:** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.
27. **TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
28. **TERMINATION WITHOUT CAUSE:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
29. **FRAUD:** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.
30. **DELAYS:**
- A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 49. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.
- B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In

**CITY OF AUSTIN  
PURCHASING OFFICE  
STANDARD PURCHASE TERMS AND CONDITIONS**

the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

**31. INDEMNITY:**

**A. Definitions:**

- i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:
  - (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or
  - (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),
- ii. "Fault" shall include the sale of defective or non-conforming Deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

**B. THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

**32. INSURANCE: (reference Section 0400 for specific coverage requirements). The following insurance requirement applies. (Revised March 2013).**

**A. General Requirements.**

- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated in Section 0400, Supplemental Purchase Provisions, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- ii. The Contractor shall provide Certificates of Insurance with the coverages and endorsements required in Section 0400, Supplemental Purchase Provisions, to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.
- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

**CITY OF AUSTIN  
PURCHASING OFFICE  
STANDARD PURCHASE TERMS AND CONDITIONS**

- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.
- vi. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- vii. If insurance policies are not written for amounts specified in Section 0400, Supplemental Purchase Provisions, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- viii. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- ix. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- x. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- xi. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. Self-insured retentions shall be disclosed on the Certificate of Insurance.
- xii. The Contractor shall provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- xiii. The insurance coverages specified in Section 0400, Supplemental Purchase Provisions, are required minimums and are not intended to limit the responsibility or liability of the Contractor.

**B. Specific Coverage Requirements: Specific insurance requirements are contained in Section 0400, Supplemental Purchase Provisions**

33. **CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2<sup>nd</sup> Street, 4<sup>th</sup> Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.
34. **NOTICES:** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the



**CITY OF AUSTIN  
PURCHASING OFFICE  
STANDARD PURCHASE TERMS AND CONDITIONS**

City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the Contract Administrator.

35. **RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL:** All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
36. **NO WARRANTY BY CITY AGAINST INFRINGEMENTS:** The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the Deliverables and (ii) the Deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the Deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the Deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the Deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such Deliverables will not impact such warranties of Contractor.
37. **CONFIDENTIALITY:** In order to provide the Deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
38. **PUBLICATIONS:** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.
39. **ADVERTISING:** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
40. **NO CONTINGENT FEES:** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

**CITY OF AUSTIN  
PURCHASING OFFICE  
STANDARD PURCHASE TERMS AND CONDITIONS**

41. **GRATUITIES:** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
42. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.
43. **INDEPENDENT CONTRACTOR:** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.
44. **ASSIGNMENT-DELEGATION:** The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.
45. **WAIVER:** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
46. **MODIFICATIONS:** The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
47. **INTERPRETATION:** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.
48. **DISPUTE RESOLUTION:**
- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such

**CITY OF AUSTIN  
PURCHASING OFFICE  
STANDARD PURCHASE TERMS AND CONDITIONS**

meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.
49. **JURISDICTION AND VENUE:** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.
50. **INVALIDITY:** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.
51. **HOLIDAYS:** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.



**CITY OF AUSTIN  
PURCHASING OFFICE  
STANDARD PURCHASE TERMS AND CONDITIONS**

52. **SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

53. **NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

54. **EQUAL OPPORTUNITY**

- A. **Equal Employment Opportunity:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.
- B. **Americans with Disabilities Act (ADA) Compliance:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

55. **BUY AMERICAN ACT-SUPPLIES (Applicable to certain Federally funded requirements)**

- A. Definitions. As used in this paragraph –

- i. "Component" means an article, material, or supply incorporated directly into an end product.
- ii. "Cost of components" means -
  - (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
  - (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.
- iii. "Domestic end product" means-
  - (1) An unmanufactured end product mined or produced in the United States; or
  - (2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

**CITY OF AUSTIN  
PURCHASING OFFICE  
STANDARD PURCHASE TERMS AND CONDITIONS**

- iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.
  - v. "Foreign end product" means an end product other than a domestic end product.
  - vi. "United States" means the 50 States, the District of Columbia, and outlying areas.
- B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.
- C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.
- D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".

**CITY OF AUSTIN  
PURCHASING OFFICE  
SUPPLEMENTAL PURCHASE PROVISIONS**

The following Supplemental Purchasing Provisions apply to this solicitation:

1. **EXPLANATIONS OR CLARIFICATIONS:** (reference paragraph 5 in Section 0200)

All requests for explanations or clarifications must be submitted in writing to the Purchasing Office by email to [terry.nicholson@austintexas.gov](mailto:terry.nicholson@austintexas.gov) no later than close of business five business days before the bid due date.

2. **INSURANCE:** Insurance is required for this solicitation.

A. **General Requirements:** See Section 0300, Standard Purchase Terms and Conditions, paragraph 32, entitled Insurance, for general insurance requirements.

- i. The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award
- ii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iii. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.
- iv. The Certificate of Insurance, and updates, shall be mailed to the following address:

City of Austin Purchasing Office  
P. O. Box 1088  
Austin, Texas 78767

B. **Specific Coverage Requirements:** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

- i. **Worker's Compensation and Employers' Liability Insurance:** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.
  - (1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
    - (a) Waiver of Subrogation, Form WC420304, or equivalent coverage
    - (b) Thirty (30) days Notice of Cancellation, Form WC420601, or equivalent coverage
- ii. **Commercial General Liability Insurance:** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).
  - (1) The policy shall contain the following provisions:
    - (a) Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
    - (b) Contractor/Subcontracted Work.
    - (c) Products/Completed Operations Liability for the duration of the warranty period.
    - (d) If the project involves digging or drilling provisions must be included that provide Explosion, Collapse, and/or Underground Coverage.
  - (2) The policy shall also include these endorsements in favor of the City of Austin:
    - (a) Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage



**CITY OF AUSTIN  
PURCHASING OFFICE  
SUPPLEMENTAL PURCHASE PROVISIONS**

- (b) Thirty (30) days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage
      - (c) The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage
    - iii. **Business Automobile Liability Insurance:** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.
      - (1) The policy shall include these endorsements in favor of the City of Austin:
        - (a) Waiver of Subrogation, Endorsement CA0444, or equivalent coverage
        - (b) Thirty (30) days Notice of Cancellation, Endorsement CA0244, or equivalent coverage
        - (c) The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.
  - C. **Endorsements:** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.
3. **TERM OF CONTRACT:**
- A. The Contract shall be in effect for an initial term of sixty (60) months and may be extended thereafter for up to one (1) additional sixty (60) month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee.
  - B. Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this agreement for such a period of time as is reasonably necessary to solicit and/or complete the project (not to exceed 120 days unless mutually agreed on in writing).
  - C. Upon written notice to the Contractor from the City's Purchasing Officer or his designee and acceptance of the Contractor, the term of this contract shall be extended on the same terms and conditions for an additional period as indicated in paragraph A above.
4. **PAYMENT:** (reference paragraphs 12 and 13 in Section 0300)

Contractor shall make payment in the form of a check payable to the City of Austin Parks and Recreation Department on a quarterly basis, regardless of the amount. A statement detailing golf ball counts by location and receipt numbers shall accompany the quarterly reconciliation check.

Checks shall be made out to the City of Austin Parks and Recreation Department and mailed to the respective contact/address listed below:

	City of Austin
Department	Austin Parks and Recreation Department
Attn:	Michelle Walker
Address	200 S. Lamar Blvd.
City, State Zip Code	Austin, Texas 78704

**CITY OF AUSTIN  
PURCHASING OFFICE  
SUPPLEMENTAL PURCHASE PROVISIONS**

**5. NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING:**

- A. On November 10, 2011, the Austin City Council adopted Ordinance No. 20111110-052 amending Chapter 2.7, Article 6 of the City Code relating to Anti-Lobbying and Procurement. The policy defined in this Code applies to Solicitations for goods and/or services requiring City Council approval under City Charter Article VII, Section 15 (Purchase Procedures). During the No-Contact Period, Offerors or potential Offerors are prohibited from making a representation to anyone other than the Authorized Contact Person in the Solicitation as the contact for questions and comments regarding the Solicitation.
- B. If during the No-Contact Period an Offeror makes a representation to anyone other than the Authorized Contact Person for the Solicitation, the Offeror's Offer is disqualified from further consideration except as permitted in the Ordinance.
- C. If an Offeror has been disqualified under this article more than two times in a sixty (60) month period, the Purchasing Officer shall debar the Offeror from doing business with the City for a period not to exceed three (3) years, provided the Offeror is given written notice and a hearing in advance of the debarment.
- D. The City requires Offerors submitting Offers on this Solicitation to provide a signed Section 0810, Non-Collusion, Non-Conflict of Interest, and Anti-Lobbying Affidavit, certifying that the Offeror has not in any way directly or indirectly made representations to anyone other than the Authorized Contact Person during the No-Contact Period as defined in the Ordinance. The text of the City Ordinance is posted on the Internet at: <http://www.ci.austin.tx.us/edims/document.cfm?id=161145>

**6. WORKFORCE SECURITY CLEARANCE AND IDENTIFICATION (ID):**

- A. Contractors are required to obtain a certified criminal background report with fingerprinting (referred to as the "report") for all persons performing on the contract, including all Contractor, Subcontractor, and Supplier personnel (for convenience referred to as "Contractor's personnel").
- B. The report may be obtained by reporting to one of the below governmental entities, submitting to fingerprinting and requesting the report [requestors may anticipate a two-week delay for State reports and up to a four to six week delay for receipt of a Federal report].
  - i. Texas Department of Public Safety for any person currently residing in the State of Texas and having a valid Texas driver's license or photo ID card;
  - ii. The appropriate governmental agency from either the U.S. state or foreign nation in which the person resides and holds either a valid U.S. state-issued or foreign national driver's license or photo ID card; or
  - iii. A Federal Agency. A current Federal security clearance obtained from and certified by a Federal agency may be substituted.
- C. Contractor shall obtain the reports at least 30 days prior to any onsite work commencement. Contractor also shall attach to each report the project name, Contractor's personnel name(s), current address(es), and a copy of the U.S. state-issued or foreign national driver's license or photo ID card.
- D. Contractor shall provide the City a Certified Criminal Background Report affirming that Contractor has conducted required security screening of Contractor's personnel to determine those appropriate for execution of the work and for presence on the City's property. A list of all Contractor Personnel requiring access to the City's site shall be attached to the affidavit.
- E. Upon receipt by the City of Contractor's affidavit described in (D) above and the list of the Contractor's personnel, the City will provide each of Contractor's personnel a contractor ID badge that is required for access to City property that shall be worn at all times by Contractor's personnel during the execution of the work.

**CITY OF AUSTIN  
PURCHASING OFFICE  
SUPPLEMENTAL PURCHASE PROVISIONS**

- F. The City reserves the right to deny an ID badge to any Contractor personnel for reasonable cause, including failure of a Criminal History background check. The City will notify the Contractor of any such denial no more than twenty (20) days after receipt of the Contractor's reports. Where denial of access by a particular person may cause the Contractor to be unable to perform any portion of the work of the contract, the Contractor shall so notify the City's Contract Manager, in writing, within ten (10) calendar days of the receipt of notification of denial.
  - G. Contractor's personnel will be required to wear the ID badge at all times while on the work site. Failure to wear or produce the ID badge may be cause for removal of an individual from the work site, without regard to Contractor's schedule. Lost ID badges shall be reported to the City's Contract Manager. Contractor shall reimburse the City for all costs incurred in providing additional ID badges to Contractor Personnel.
  - H. ID badges to enter and/or work on the City property may be revoked by the City at any time. ID badges must be returned to the City at the time of project completion and acceptance or upon removal of an individual from the work site.
  - I. Contractor is not required to obtain reports for delivery personnel, including but not limited to FedEx, UPS, Roadway, or other materials delivery persons, however all delivery personnel must present company/employer-issued photo ID and be accompanied by at least one of Contractor's personnel at all times while at the work site.
  - J. The Contractor shall retain the reports and make them available for audit by the City during regular business hours (reference paragraph 17 in Section 0300, entitled Right to Audit).
7. **CONTRACT MANAGER:** The following person is designated as Contract Manager, and will act as the contact point between the City and the Contractor during the term of the Contract:

Kirk Scanlon

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Phone: 512-974-6767

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Email : [Kirk.scanlon@austintexas.gov](mailto:Kirk.scanlon@austintexas.gov)

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\*Note: The above listed Contract Manager is not the authorized Contact Person for purposes of the **NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING Provision** of this Section; and therefore, contact with the Contract Manager is prohibited during the no contact period.



**CITY OF AUSTIN  
PURCHASING OFFICE  
SOLICITATION NO. RFP TVN**

**EXCURSION BOAT OPERATION ON LADY BIRD LAKE  
SCOPE OF WORK**

**1.0 PURPOSE**

The City of Austin (City) through its Parks and Recreation Department (PARD), seeks proposals from highly qualified vendors for an annual revenue contract to operate excursion boats on Lady Bird Lake. For the purpose of this Request for Proposals ("RFP") the term "excursion boats" shall mean commercial vessels that offer paid trips to the public and/or for charter for one or more of the following purposes: sightseeing excursions, dinner and other meal service, entertainment, special events, corporate or other group uses.

The City's goal is to provide the public with the best and most satisfactory service from the concession, as well ensure that the City receives appropriate compensation for the use of public assets.

**2.0 BACKGROUND**

Lady Bird Lake was formed in 1960 by the construction of Longhorn Dam on the Lower Colorado River. Lady Bird Lake is approximately six (6) miles long from Longhorn Dam to the east to Tom Miller Dam to the west. The City of Austin began providing excursion boat services to the public in 1979.

Today, excursion boats operate lake tours providing patrons the opportunity to enjoy the Austin skyline, natural beauty of the lake and shoreline. Another major attraction is and to conduct Bat Tours, which tourists and Austinites alike a close up view of the evening flight of Mexican Free-tail bats from under the Ann W. Richards Congress Avenue Bridge. The bridge is home to North America's largest urban colony of Mexican Free-tailed Bats and their evening exodus to feed is spectacular.

Programs, events, and other activities on adjacent parkland may cause nuisances such as limited parking, noise, and higher pedestrian traffic on the trail and in the park. Proposer will be required to coordinate all concession activities with other park events and programming. Proposer shall have access and the ability to operate out of concession area during the stated hours of operation within this scope. (seven days a week)

**3.0 PROJECT GOALS**

**Exceptional Experience:** Excursion boats play a significant role promoting our city by providing visitors and local citizens an opportunity to enjoy and view our City. In doing so, it is imperative that the Respondent attain the highest level of professionalism in customer service and value.

**Expansion of Service:** Over the last ten years, Austin has realized significant population growth and economic development along the length of Lady Bird Lake. The City encourages the Respondent to seek creative options for expanding the service area through partnerships with other entities along the lake for the purpose of loading and unloading passengers or establishing destinations for tourist activities.

**Environmental:** Water quality and protection and conservation of flora and fauna in Lady Bird Lake are priorities for the City. The City seeks a Respondent who can operate the concession with a minimal impact to the environment by eliminating or reducing emissions, sound and light pollution and erosion and providing recycling and other initiatives.

**Public Safety:** Lady Bird Lake is a primary recreation area for the City of Austin. Due to the river's length, calm waters, and prohibition against most motorized watercraft the lake is a popular destination for kayaks, canoes, stand-up paddleboards and crew. In recent years the lake has seen a dramatic increase in the use of non-motorized watercraft. Ensuring the safety of all boaters on the lake is paramount.

**CITY OF AUSTIN  
PURCHASING OFFICE  
SOLICITATION NO. RFP TVN**

**Premises – Operational Efficiency and Safety:** The concession area requires a thoughtful strategy to ensure operational efficiency and public safety due to constraints of the site. Specifically, the Roy and Ann Butler hike and bike trail bisects the concession area and there is no parking adjacent to the site. The Respondent is required to consider these constraints and address them in the proposal.

**Premises – American Disability Act Compliance:** Access from the parking area to the bulkhead of the current dock is not ADA accessible. The City seeks to ensure all recreational amenities are in compliance with the American Disabilities Act, and, therefore, seeks solutions from the Proposer to issue.

**4.1.1. IMPLEMENTATION**

**Operations:** The Proposer shall have the right to manage and operate excursion boat services on Lady Bird Lake, in conformance to the terms of the contract.

Expectation: The Proposer shall operate public cruises, at a minimum, seven days a week from April through October and on weekends March through October, except during periods of inclement weather. The Proposer shall be available to provide private charters year around.

- 4.1.2. The City requires that the Proposer possess a minimum 3-years' experience successfully operating excursion and charter boat services.
- 4.1.3. The concession will operate from park land located on the south side of Lady Bird Lake east of Drake Bridge at 101 South First Street in Central Austin (see Exhibit A).
- 4.1.4. Proposer shall demonstrate the ability to perform in this type of business. The proposal must clearly articulate plans for the operation that demonstrate compliance with appropriate laws and regulations and service consistent with the Department's best management practices.
- 4.1.5. Personnel: Proposer shall provide, at Proposer's sole expense, a sufficient number of trained employees to facilitate the performance of the contract.
  - 4.1.5.1. The Proposer shall perform regularly scheduled maintenance of the boat, dock, and concession area.
  - 4.1.5.2. The Proposer shall provide staff with the skills, training, and experience to meet the demands of the public and provide exceptional customer service.
  - 4.1.5.3. The Proposer's staff shall have the experience, skills, training, certifications to comply with all applicable City, State, and Federal laws for fleet operation and public safety
- 4.1.6. Fleet: The Proposer will provide a fleet of boats that provide for the greatest range of excursion activities and amenities to ensure customer satisfaction, revenue generation, and public safety.
  - 4.1.6.1. The fleet shall meet all applicable city, state, and federal codes and laws and be of quality construction and in excellent mechanical condition.
  - 4.1.6.2. The excursion boats must be aesthetically pleasing and symbolically connect to the history of the Colorado River and City of Austin.
  - 4.1.6.3. The fleet shall meet the highest standards for mitigating environmental factors such as emissions and sound.
  - 4.1.6.4. The Proposer shall perform regularly scheduled preventative maintenance on fleet to ensure a minimum of lost revenue due to servicing and other mechanical issues.
- 4.1.7. Concession Area on Parkland: The Proposer shall improve and maintain the concession area on parkland to provide accessibility and mitigate user conflicts.
  - 4.1.7.1. Proposer shall install signage to promote the concession and safe use of the concession area.

**CITY OF AUSTIN  
PURCHASING OFFICE  
SOLICITATION NO. RFP TVN**

- 4.1.7.2. Proposer shall install infrastructure to ensure compliance with the American Disabilities Act.
- 4.1.7.3. Proposer shall mitigate conflict with trail users on Ann and Roy Butler Hike and Bike Trail.
- 4.1.8. Regulatory: The Proposer shall comply with all applicable City, State, and Federal laws, ordinances, regulations and codes.
  - 4.1.8.1. Proposer shall obtain all permits and licenses necessary to operate, manage, and maintain the proposed excursion boat business.
  - 4.1.8.2. And, if applicable, to sell on the Premises: (1) food and beverages, (2) merchandise related to, or consistent with, the Business, (3) goods and services in furtherance of the Business, and (4) upon approval by the City, alcoholic beverages. All permits shall be mounted in conspicuous locations.
  - 4.1.8.3. American Disability Act
- 4.1.9. Environment: Proposer shall promote environmental stewardship of the lake and enforce and prohibit any activities that would lead to its degradation.
  - 4.1.9.1. At a minimum, the Proposer will prohibit dumping of refuse into the lake, swimming in the lake, any harm to flora or fauna within or adjacent to the lake.
  - 4.1.9.2. The Proposer shall not permit glass in the dock area, on concession's equipment or on the premises of the concession, except during a catered event at which time glass bottles shall be kept at the bar.
  - 4.1.9.3. Proposer will provide waste and recycling containers to be located in the concession area.
  - 4.1.9.4. Recycling Program. Proposer will provide separate containers to collect recyclables such as glass, paper, and aluminum. Proposer shall implement a recycling program and shall continue said program throughout the term of the Contract.
- 4.1.10. Customer Comment: Proposer will provide to Contract Manager a process for obtaining citizen comment. This includes but is not limited to a complaint box, specific website, email address, or Quick Response Code. The Proposer shall contact Contract Manager within twenty-four (24) hours of receipt of any complaint.
- 4.1.11. Media: Each party shall promptly notify the other of all media inquiries that could have a material effect on the Concession. The Proposer will provide draft copies of any significant public relations campaign materials to the City's Contract Manager for approval by the PARD Director, which shall not be unreasonably withheld, five (5) business days before the release of any such material or campaign.
- 4.2. **Business Venture:** Proposer shall provide a turnkey operation of the Concession without the financial support, compensation or investment – direct or in-kind – from the City.
  - 4.2.1. Payment: The successful proposer shall pay: a) fixed monthly concession fee and/or, b) percentage of annual gross revenue (less sales tax) to the City. If revenue proposal includes *Option (b)*, then at the end of each calendar year, Proposer will pay to the City -- in one lump sum -- a percent of annual gross revenue (less sales tax) of the concession.
    - 4.2.1.1. Monthly payments shall be remitted to the Contract Manager on or before the tenth day of the month following the month in which sales are made.
    - 4.2.1.2. If payment is not timely made, interest shall accrue on the unpaid balance at the lesser of one (1) percent per month or the maximum lawful rate; except, if payment is not timely made for a reason, interest shall not accrue until ten (10) days after the grounds for withholding payment have been resolved

**CITY OF AUSTIN  
PURCHASING OFFICE  
SOLICITATION NO. RFP TVN**

- 4.2.2. Infrastructure: Proposer is responsible for all capital investment along with capital improvements needed to start the Business venture and maintain the concession. Capital improvements may include, but not be limited to, dock, railings, ramps, gates, and shade awnings.
- 4.2.2.1. Proposer shall not make any structural alterations, repairs, or improvements of the premises, without prior written authorization from the Contract Manager. Alterations shall be done at the expense of the Proposer and shall become property of the City
- 4.2.2.2. Proposer shall secure and pay for any required utilities necessary for the operation of the concession on the premises.
- 4.2.2.3. The City shall have the right to require the Proposer to restore the property to its original condition at the Proposers expense. No permanent shade structures will be permitted on the dock.
- 4.2.2.4. The Proposer shall access, provide, and install all necessary furnishings and equipment for the operation of the fleet and concession area. All furnishings and equipment shall be of quality material and construction and attractive in design and provide the highest level of customer service, accessibility, and affordability for guests and patrons.
- 4.2.2.5. At all times during the Term of the Contract, the Proposer shall make all preventative, regular and ordinary maintenance and repairs to the fleet and the concession area.
- 4.2.3. Advertising: Proposer is permitted and encouraged to engage in reasonable advertising, solicitation, and promotional activities to realize the full potential of the Concession's use. In the event this Contract terminates or expires, the Proposer is responsible for removal of business venture signage at its sole expense.
- 4.2.4. Taxes: Proposer agrees that it will pay any and all lawful taxes upon personal property and improvements and all other lawful taxes levied against the property, income, and/or Proposer Equipment, or operations of Proposer. Delinquency in paying any such tax may be cause for termination of this Contract.
- 4.2.5. Pricing: Proposer shall provide and display in a conspicuous place a list of rental prices, prices of all other items for sale, other services for sale and hours of operation. Prices, including price changes, rules, and all other relations of the concessionaire with the public shall be subject to approval by Contract Manager.
- 4.2.5.1. Proposer's prices for public cruises, private charters and items sold shall not be changed for a minimum of ninety (90) days from the date of contract signing. All changes in prices or items sold must have prior approval of the Contract Manager. The design and location of this posting shall be subject to the approval of the Contract Manager. All health cards and permits shall be displayed in a conspicuous location.

**5.0 PREMISES**

- 5.1. Access: In consideration of the mutual terms and covenants of this Management, Maintenance, and Operations Contract, Proposer has the right to occupy and use the Premises described in the Concession Site Map, Exhibit A. With notice and coordination, the City will have 24-hour, 365 days a year access to all parts of the Concession. City will conduct regular site visits to ensure contract compliance.



**CITY OF AUSTIN  
PURCHASING OFFICE  
SOLICITATION NO. RFP TVN**

- 5.2. Regulatory: Proposer assumes all responsibility for any and all licenses, clearances, permits and other certificates as may be required for Proposer's lawful operation, use, possession and occupancy of the Concession. Proposer agrees to fully comply with all laws, rules, regulations and orders of all local, state and federal governmental authorities which in any way relate to the property and facilities. Proposer shall pay the cost of all license and registration fees and renewals thereof.
- 5.2.1. No Smoking is allowed in the Concession. Proposer shall post no smoking signs and enforce the no smoking ordinance throughout the Concession.
- 5.2.2. Proposer shall neither commit nor allow to be committed, any waste on the Premises, nor shall Proposer maintain, commit or permit the maintenance or commission of any nuisance on the Premises or use the Concession for any unlawful purpose.
- 5.2.3. Proposer may not use any part of the Premises for any use or purpose that violates any applicable law, regulation, or ordinance of the United States, the State of Texas, the County of Travis, or the City of Austin, or other lawful authority with jurisdiction over the Premises.
- 5.3. Inspections. The City shall conduct periodic and regular inspections as may be required to insure that fire, safety, health, maintenance and sanitation regulations and other provisions contained in this Contract or in the City Code are being adhered to by the Proposer, and may immediately enter any area if required to assess or respond to an event or condition that in the City's opinion creates imminent danger, injury or damage to person or property. The City shall notify the Proposer of its findings, specifying any items needing attention. The Proposer agrees to grant the City the right to access the Concession for inspections during normal business hours, and after hours, with prior notice as may be necessary. Failure to conduct any inspections as may be required shall not operate as a waiver of the City's right to conduct these inspections and shall not be considered a default of the terms of this Contract.
- 5.4. Infrastructure: The City is not responsible for furnishing any equipment for use by the Proposer in the maintenance, management, and operation of the Concession. No City funds shall be used to acquire equipment to be used by the Proposer. The Proposer shall own all Proposer's equipment purchased. The Proposer, at its sole cost and expense, shall be responsible for repair and/or replacement of any Proposer's Equipment during the term of the Contract.

**6.0 SAFETY AND SECURITY**

- 6.1. Security: The Proposer shall bear responsibility to provide for the security of the dock, boats and other assets. The Proposer shall implement preventative measures against vagrancy, vandalism, arson, or other illegal acts. Proposer shall maintain reasonable physical security controls at the Concession
- 6.2. Plans: Proposer shall provide and adhere to a Safety and Security Plan that includes, but is not limited to detailed action plans for staff and management in the event of an accident or injury to Concession patrons or any citizen in the vicinity of the Concession's operation. The Safety Plan shall include detailed actions in the event of damage to public or private property by Proposer's vessel (s). Proposer will maintain order on the boat and control patron behavior to minimize risk of damage to public or private property and injury to staff or customers.
- 6.3. Inspections: Fire Code Inspections. Proposer will permit the City's Fire Marshal or his or her authorized agents to inspect the Premises, and Proposer and City will comply with all requirements of the Fire Marshal or his or her authorized agents that are necessary to bring the Premises into compliance with the City Fire Code and Building Code provisions regarding fire safety. Proposer shall maintain in proper condition accessible fire extinguishers of a number and type approved by the Fire Marshal or his or her authorized agents for the particular hazard involved.

**CITY OF AUSTIN  
PURCHASING OFFICE  
SOLICITATION NO. RFP TVN**

- 6.4. Incident Reports. Proposer shall maintain for review by the City upon reasonable notice, information as reasonably required by the City to satisfy the City's responsibilities, including information regarding injuries and unusual incidents at the Concession, and regarding security measures and safety programs (including recommendations for changes for such measures/programs) at the Concession.

**7.0 CITY'S OBLIGATIONS**

- 7.1. Contract Manager: The City shall designate a Contract Manager, who will be responsible for exercising general oversight and direction of the Proposer's obligations and efforts.
- 7.2. The Contract Manager shall maintain records provided to the City by the Proposer and shall work with City management to determine the acceptability of the deliverables and services provided under the terms of the contract.
- 7.3. The Contract Manager shall give the Proposer timely feedback on request for changes in hours of operation, structural alterations, repairs, or improvements.
- 7.4. The Contract Manager will provide the Proposer with updates and bulletins on event's and other City activities that may affect Proposer operations.

**8.0 ACCOUNTING**

- 8.1. Financial Reports. Proposer shall submit to the City within thirty (30) days after the end of the each quarter the following financial reports related to the obligations of this contract:
- 8.1.1. Income Statement
  - 8.1.2. Balance Sheet
  - 8.1.3. Cash Flow
  - 8.1.4. Bank Statements of each

**9.0 RECORDS AND REPORTS**

- 9.1. Proposer shall meet the following accounting and record keeping requirements. Proposer shall:
- 9.1.1. maintain a separate accounting and record keeping for its operations including alcohol operations, in accordance with Generally Accepted Accounting Principles (GAAP).
  - 9.1.2. maintain full and accurate records of all operations and receipts, which records shall be in accordance with GAAP.
  - 9.1.3. maintain itemized records of all costs incurred and paid, including original invoices.
  - 9.1.4. pay all costs and expenses connected with its operations when due.
  - 9.1.5. maintain all personnel files, payroll summaries, copies of payroll tax returns, Account deposit receipts and bank statements.
- 9.2. The City or its authorized agents shall have the right to inspect such books or original entries and other related books, records or receipts, wherever located, at such reasonable times and as often as may be requested during the term of this Contract and, following the term of this Contract, for a period of three (3) years, or such further time as necessary to complete an audit should an audit last beyond three (3) years after the termination of this Contract for any reason.
- 9.3. Records must be kept on City facilities or at some other location mutually agreeable to the parties.
- 9.4. **Monthly Reports.** Proposer shall submit all required reports below to the City monthly on or before fifteen (10) days after the reporting month.

**CITY OF AUSTIN  
PURCHASING OFFICE  
SOLICITATION NO. RFP TVN**

- 9.4.1. Revenue Reports: Proposer shall use a cash register to enter transactions and provide each customer with a printed receipt. The cash register shall have a grand total started at zero upon daily commencing business and shall print out daily sales totals. Proposer shall submit to Contract Manager, by the tenth (10<sup>th</sup>) of each month, the Monthly concession Revenue Report supplied by the Contract Manager) and the cash register tapes from the previous month. Proposer shall retain copies of the cash register tapes for three years after the contract expires.
- 9.4.2. Activity Reports: Proposer shall submit to contract Manger no later than the tenth (10<sup>th</sup>) day of each month a monthly activity/attendance report to be completed on a form provided by Contract Manger.
- 9.4.3. Incident Report shall be submitted to the Contract Manager within 2 days of the time of occurrence. The Contract Manager will provide the Proposer the Incident Form.
- 9.4.4. Sales Tax Reports: Proposer shall submit upon request of the Contract Manager a copy of the monthly or quarterly sales tax and liquor tax reports within 10 days of the request.
- 9.5. Proposer shall submit to Contract Manager annually prior to the contract date an inventory of the types and sizes of Personal Floatation Devices (PFDs) that include age and condition of the PFDs.
- 9.6. Tax Forms: Proposer shall provide to Contract Manager a copy of Internal Revenue Service Form 1040, Schedule C (Statement of Operations), and all other applicable federal tax forms, including Extension forms pertaining specifically to concession business. The form shall be submitted to Contract Manager annually within seven (7) days of filing with the IRS.
- 9.7. **Independent Audit.** Independent certified audits of Proposer's operations shall be submitted to the City by the anniversary date of the contract each year. Proposer shall pay for the Annual Certified Audit out of its independent funds. Proposer may define the scope of the audit and recommend a firm to conduct the audit to be approved by the City. Audits will be conducted by a Certified Public Accountant. The audit report/statements will be submitted to the City directly by the Auditor. A copy of the audit report/statements will be provided to Proposer directly by the Auditor.

**10.0 ACCEPTANCE OF WORK.** The Proposer's performance will be measured on the following criteria.

- 10.1. Successfully meeting financial obligations to the City.
- 10.2. Timely submittals of reports and plans as specified throughout the contract.
- 10.3. Successfully operating the Concession in accordance with the proposal and submitted plans based on the City's management and review of the contract.
- 10.4. Compliant with the contract on site visits by the City of Austin.
- 10.5. Submission of monthly, quarterly and annual financial reports and independent audit.

**ATTACHMENTS:**

- A. Exhibit A: Plan view of concession site (Premises).

**CITY OF AUSTIN  
PURCHASING OFFICE  
PROPOSAL PREPARATION INSTRUCTIONS AND EVALUATION FACTORS  
SOLICITATION NUMBER: RFP TVN0048**

**1.0 PROPOSAL FORMAT**

The original and copies must be submitted on 8.5 x 11 paper and in a 3-ring binder.

The proposal itself shall be organized in the following format and informational sequence:

- A. **Part I - Business Organization:** State full name and address of Proposer's organization and identify parent company if a subsidiary. Specify the branch office or other subordinate element which will perform, or assist in performing, work herein. Indicate whether Proposer operates as a partnership, corporation, or individual. Include the State in which incorporated or licensed to operate.
- i. Acquire another business entity? If yes, explain organizational or directional impact.
  - ii. Business Status - Is proposer currently for sale or involved in any transaction to expand or past or pending litigation or claims against Proposer that would affect proposer's performance of managing, maintaining, and operating the Concession.
  - iii. Existence of any relationship between Proposer and any employee or officer of the City of Austin and Austin Parks and Recreation Department.
  - iv. Provide information to assist in assessing Proposer's demonstrated financial capability and resources to provide the services described in this Request for Proposal (RFP).
- B. **Part II – Personnel Qualifications, training, licenses, certifications**
- i. Provide summary resumes for Proposer's proposed key personnel and subcontractors who will be providing services under the agreement, including their specific experiences with similar projects, and number of years of employment with Proposer.
    - a. List of staffing and supervision
    - b. Staff qualifications, training, certifications and licenses
    - c. Detail number of staff that will work each shift
    - d. Detail number of staff that will work during peak hours
  - ii. Include names and qualifications of all personnel who will be assigned to this concession. State the primary work assigned to each person and the percentage of time each person will devote to this work. Identify key persons by name and title. Provide all resumes.
- C. **Part II - Project Operation and Promotion:** Define in detail Proposer's understanding of the requirement presented in the Scope of Work of this RFP and Proposer's solution. Provide all details as required in the Scope of Work and any additional information you deem necessary to evaluate your proposal.
- i. Describe Proposer's ability to provide a turnkey operation of the Concession without the financial support, compensation, or investment, direct or in-kind, from the City. At a minimum, this section of the proposal shall include:
    - a. Creative and innovative ideas to provide for a first-rate excursion boat operation
    - b. Expansion of service to other areas of the lake.
    - c. What will draw patrons to your concession
    - d. What will keep them coming back
    - e. What will be your specialty
    - f. What will be your concession's signature feature
    - g. Your customer service philosophy



**CITY OF AUSTIN  
PURCHASING OFFICE  
PROPOSAL PREPARATION INSTRUCTIONS AND EVALUATION FACTORS  
SOLICITATION NUMBER: RFP TVN0048**

- h. Plans to market and advertise the concession to increase and or maintain your customer base
- i. Plan to maintain and monitor customer satisfaction
- j. Implementation timeline
- k. A statement of Proposer's compliance with all applicable rules and regulations of Federal, State and Local governing entities. The Proposer must state his compliance with terms of this Request for Proposal (RFP).
- l. State environmental mission as it applies to the operation of the excursion boat including policies, education, programming, and operations.
- m. List of partners and letters of commitment to provide additional options for loading and unloading of passengers.

**D. Part III – Pricing and Services**

- i. Detail services and prices for all items, including, but not limited to:
  - a. Concession items (food, beverages, merchandise)
  - b. Public Tours
  - c. Private Charters

**E. Part IV – Premises:**

- i. A sketch or rendering and description of Proposer's proposed project concept for site infrastructure and operations including:
  - a. ADA Access – including any capital improvement to the Premises required to ensure compliance with the ADA.
  - b. Parking for staff, patrons, and subcontractors.
  - c. Mitigation of trail use conflict with concession operations.
- ii. A copy of Contractor's recycling program shall be provided to the Director for approval within forty-five (45) days after the Effective Date of the Contract.

**F. Part IV – Fleet & Equipment**

- i. Include a list of boats and equipment that will be provided and used to successfully operate the concession and the plan to maintain the quality of the equipment.
- ii. Provide a detailed plan with a schedule of tasks for the maintenance of both the premises and equipment
- iii. Include a contingency plan to maintain optimal service in the event of an equipment failure or breakdown
- iv. Include a detailed description of the dock and equipment used for operations such as storage of fuel and equipment, security measures, and materials used.
- v. Please provide specifications, description, maintenance and operation methods that meet environmental goals such as reduced emissions, limited sound and light pollution, zero waste, recycling, and water quality.
- vi. Provide detailed information on methods and infrastructure to be used to ensure the security of the Premises and the fleet.

**CITY OF AUSTIN  
PURCHASING OFFICE  
PROPOSAL PREPARATION INSTRUCTIONS AND EVALUATION FACTORS  
SOLICITATION NUMBER: RFP TVN0048**

**G. Part VI – Safety Plan**

- i. Provide a detailed action plan including but not limited to emergency protocols for man overboard, collision, weather, passenger or crew illness, hazardous materials and mechanical failure.
- ii. Provide detailed information on rules and education protocols to ensure passenger and safety.
- iii. Provide any information including, but not limited to, protocols, plans, education and outreach programs, training, certification, security measures, equipment, that is relevant to the protection of public and private property and the safety of patrons, crew and other lake users.
- iv. Provide a detailed plan of for ensuring the operation of the excursion boat (s) to ensure the safety of other lake users.

**H. Part VIII - Management Structure:**

- i. Provide a general explanation and chart which specifies project leadership and reporting responsibilities; and interface the team with City project management and team personnel. If the use of subcontractors is proposed, identify their placement in the primary management structure, and provide internal management description for each subcontractor.

**I. Part IX - Prior Experience:** Describe your business entity's background and experience in providing excursion boat services similar to this concession. If this is a new company, partnership, or joint venture formed for the operation of this concession, describe the background and qualifications of each of the partners or principals. **Note:** This section pertains to your business entity's PAST experience and CURRENT operations, not PROPOSED operations for this concession.

- i. Years in business
- ii. Relevant past or ongoing projects
- iii. Past experience in managing similar management, maintenance, and operation revenue sharing agreements.
- iv. Provide a customer reference list of no less than three (3) organizations with which Proposer currently has contracts and/or to which Proposer has previously provided services (within the past five (5) years) of a type and scope similar to those required by this RFP. Proposer will include in its customer reference list, at a minimum, the customer's company name, contact person, telephone number, email address, project description, length of business relationship, and background of services provided by Proposer.

If Proposer has previously contracted with City, Proposer may include such contract in its reference list but the City reference should be in addition to, and not one of, the three required references.

**J. Part X - Local Business Presence:** The City seeks opportunities for businesses in the Austin Corporate City Limits to participate on City contracts. A firm (Offeror or Subcontractor) is considered to have a Local Business Presence if the firm is headquartered in the Austin Corporate City Limits, or has a branch office located in the Austin Corporate City Limits in operation for the last five (5) years. The City defines headquarters as the administrative center where most of the important functions and full responsibility for managing and coordinating the business activities of the firm are located. The City defines branch office as a smaller, remotely located office that is separate from a firm's headquarters that offers the services requested and required under this solicitation.

**CITY OF AUSTIN  
PURCHASING OFFICE  
PROPOSAL PREPARATION INSTRUCTIONS AND EVALUATION FACTORS  
SOLICITATION NUMBER: RFP TVN0048**

Points will be awarded through a combination of the Offeror's Local Business Presence and/or the Local Business Presence of their subcontractors. Evaluation of the Team's Percentage of Local Business Presence will be based on the dollar amount of work as reflected in the Offeror's MBE/WBE Compliance Plan or MBE/WBE Utilization Plan. Specify if and by which definition the Offeror or Subcontractor(s) have a local business presence.

**K. Part XI - Non-Collusion, Non-Conflict of Interest, and Anti-Lobbying:**

- i. The Austin City Council adopted Ordinance No. 20071206-045 on December 6, 2007, adding a new Article 6 to Chapter 2-7 of the City Code relating to Anti-Lobbying and Procurement. The policy defined in this Code applies to Solicitations for goods and/or services exceeding \$5,000. During the No-Contact Period, Offerors or potential Offerors are prohibited from making a representation to anyone other than the person designated in the Solicitation as the contact for questions and comments regarding the Solicitation.
- ii. If during the No-Contact Period an Offeror makes a representation to anyone other than the Authorized Contact Person for the Solicitation, the Offeror's Offer is disqualified from further consideration except as permitted in the Ordinance.
- iii. The City requires Offerors submitting Offers on this Solicitation to provide a signed affidavit certifying that the Offeror has not in any way directly or indirectly made representations to anyone other than the Authorized Contact Person during the No-Contact Period as defined in the Ordinance (see the Non-Collusion, Non-Conflict of Interest, and Anti-Lobbying Affidavit included in the Solicitation).

**L. Part XII - Proposal Acceptance Period:** All proposals are valid for a period of one hundred and eighty (180) calendar days subsequent to the RFP closing date unless a longer acceptance period is offered in the proposal.

**M. Part XIII - Proprietary Information:** All material submitted to the City becomes public property and is subject to the Texas Open Records Act upon receipt. If a Proposer does not desire proprietary information in the proposal to be disclosed, each page must be identified and marked proprietary at time of submittal. The City will, to the extent allowed by law, endeavor to protect such information from disclosure. The final decision as to what information must be disclosed, however, lies with the Texas Attorney General. Failure to identify proprietary information will result in all unmarked sections being deemed non-proprietary and available upon public request.

**N. Part XIV - Authorized Negotiator:** Include name, address, and telephone number of person in your organization authorized to negotiate Contract terms and render binding decisions on Contract matters.

**O. Part XV - Revenue Proposal:** Describe and detail your proposed revenue model based on gross revenue (total revenue minus sales tax). Your model may provide for minimums, fixed or variable revenues, and scaled revenues as appropriate. Proposer shall submit proposed revenue as a total for each contract year (January 1<sup>st</sup> to December 31<sup>st</sup>) and extension options.

**2.0 EXCEPTIONS:**

Be advised that exceptions to any portion of the Solicitation may jeopardize acceptance of the Proposal.

**3.0 PROPOSAL PREPARATION COSTS:**

All costs directly or indirectly related to preparation of a response to the RFP or any oral presentation required to supplement and/or clarify a proposal which may be required by the City shall be the sole responsibility of the Proposer.

**CITY OF AUSTIN  
PURCHASING OFFICE  
PROPOSAL PREPARATION INSTRUCTIONS AND EVALUATION FACTORS  
SOLICITATION NUMBER: RFP TVN0048**

**4.0 EVALUATION FACTORS AND AWARD**

A. **Competitive Selection:** This procurement will comply with applicable City Policy. The successful Proposer will be selected by the City who provides the best operational value to the City. Evaluation factors outlined in Paragraph B below shall be applied to all eligible, responsive Proposers in comparing proposals and selecting the Best Offeror. Award of a Contract may be made without discussion with Proposers after proposals are received. Proposals should, therefore, be submitted on the most favorable terms.

B. **Evaluation Factors:**

- i. **Project Concept and Solution** (30 points)
- ii. **Revenue Proposal** (20 Points)  
(The proposer with the highest overall projected revenue is awarded the maximum points; other proposers are awarded points on a pro-rated basis.)
- iii. **Experience and Personnel Qualification** (15 points)
- iv. **Pricing (goods and services)** (15 points)
- v. **Safety Plan** (10 points)
- vi. **Local Business Presence** (Maximum 10 points)

Team's Local Business Presence	Points Awarded
Local business presence of 90% to 100%	10
Local business presence of 75% to 89%	8
Local business presence of 50% to 74%	6
Local business presence of 25% to 49%	4
Local presence of between 1 and 24%	2
No local presence	0

i. **Optional Interview: (25 Points)**

The City may in its sole discretion, elect to conduct interviews with all or a short list of the highest evaluated, most-qualified Proposers to facilitate selecting proposal(s) and may award up to a maximum of 25 points for the interview, thereby establishing 125 as the maximum total points available for proposals. If no interviews are conducted, the total maximum points available will be 100.



**Section 0605: Local Business Presence Identification**

A firm (Offeror or Subcontractor) is considered to have a Local Business Presence if the firm is headquartered in the Austin Corporate City Limits, or has a branch office located in the Austin Corporate City Limits in operation for the last five (5) years. The City defines headquarters as the administrative center where most of the important functions and full responsibility for managing and coordinating the business activities of the firm are located. The City defines branch office as a smaller, remotely located office that is separate from a firm's headquarters that offers the services requested and required under this solicitation.

**OFFEROR MUST SUBMIT THE FOLLOWING INFORMATION FOR EACH LOCAL BUSINESS (INCLUDING THE OFFEROR, IF APPLICABLE) TO BE CONSIDERED FOR LOCAL PRESENCE.**

*NOTE: ALL FIRMS MUST BE IDENTIFIED ON THE MBE/WBE COMPLIANCE PLAN OR NO GOALS UTILIZATION PLAN, SECTION 0900 OF THE SOLICITATION.*

**\*USE ADDITIONAL PAGES AS NECESSARY\***

**OFFEROR:**

Name of Local Firm	Lone Star Riverboat, Inc.					
Physical Address	1400 West 41st Street, Austin, Texas 78756					
Is Firm located in the Corporate City Limits? (circle one)	<input checked="" type="radio"/> Yes X			No		
In business at this location for past 5 yrs?	<input checked="" type="radio"/> Yes X			No		
Location Type:	Headquarters	<input checked="" type="radio"/> Yes X	No	Branch	Yes	No

**SUBCONTRACTOR(S):**

Name of Local Firm	Pok-e-Jo's BBQ					
Physical Address	4109 S Capitol of TX Hwy #100B, Austin, TX 78704					
Is Firm located in the Corporate City Limits? (circle one)	<input checked="" type="radio"/> Yes X			No		
In business at this location for past 5 yrs?	<input checked="" type="radio"/> Yes X			No		
Location Type:	Headquarters	Yes	No	Branch	<input checked="" type="radio"/> Yes X	No

**SUBCONTRACTOR(S):**

Name of Local Firm						
Physical Address						
Is Firm located in the Corporate City Limits? (circle one)	Yes			No		
In business at this location for past 5 yrs?	Yes			No		
Location Type:	Headquarters	Yes	No	Branch	Yes	No

Solicitation No. RFP TVN0048

**Section 0700: Reference Sheet - Customer References**

Please include the following information if required in the solicitation:

Responding Company Name Lone Star Riverboat, Inc.

1. Company's Name Indie Merch, LLC  
Name and Title of Contact Dameon Guess, Promotion Manager  
Present Address 3135 Chester Avenue  
City, State, Zip Code Cleveland, Ohio 44114  
Telephone Number (216) 789-9142 Fax Number ( )   
Email Address dameon@indiemerch.com

2. Company's Name ASML  
Name and Title of Contact Rusty Page, SAles & Marketing  
Present Address 2324 Ridgpoint Drive, Suite G1  
City, State, Zip Code Austin, Texas 78754  
Telephone Number (512) 663-1082 Fax Number ( )   
Email Address rpage424@gmail.com

3. Company's Name   
Name and Title of Contact Melissa Hochadel  
Present Address 54 Rainey Street #513  
City, State, Zip Code Austin, Texas 78710  
Telephone Number (716) 998-5194 Fax Number ( )   
Email Address melissarose329@gmail.com

Solicitation No. RFP TVN0048

4. Company's Name Berlin School of Music  
Name and Title of Contact Katja Hermes, Director  
Present Address 10117 Berlin  
City, State, Zip Code Berlin, Germany 154121B  
Telephone Number 49 (176) 232-58596 Fax Number ( )   
Email Address katja@sounddiplomacy.com

5. Company's Name Captain Morgan Sales  
Name and Title of Contact Hannah Garrouette, Promotions  
Present Address 1607 Rabb Road  
City, State, Zip Code Austin, Texas 78704  
Telephone Number (303) 332-8592 Fax Number ( )   
Email Address hgarrouette@mktg.com

Solicitation No. RFP TVN0048

**Section 0700: Reference Sheet**

**Credit References**

Please include the following information if required in the solicitation:

Responding Company Name Lone Star Riverboat, Inc.

1. Company's Name Pok-e-Jo's Smokehouse, Inc.  
Name and Title of Contact Jon Brink  
Present Address 4109 S. Capitol of Texas Highway #100B  
City, State, Zip Code Austin, Texas 78704  
Telephone Number (512) 440-0447 Fax Number (512) 440-0538  
Email Address brodieoaks@pokejos.com

2. Company's Name ABCO Wholesale  
Name and Title of Contact Sales  
Present Address 11101 Pluff Bend Drive  
City, State, Zip Code Austin, Texas 78753  
Telephone Number ( 512 ) 837-5887 Fax Number ( 512 ) 832-1650  
Email Address hn@abcopaper.com

3. Company's Name Kwik Ice  
Name and Title of Contact Sales  
Present Address 5715 Burnet Road  
City, State, Zip Code Austin, Texas 78756  
Telephone Number ( 512 ) 453-3622 Fax Number ( 512 ) 453-2600  
Email Address james@kwikice.com

Solicitation No. RFP TVN0048



4. Company's Name Chase Bank  
Name and Title of Contact Bradley Bartkowiak, Asst Vice President  
Present Address 4601 N Lamar Blvd. Ste 100  
City, State, Zip Code Austin, Texas 78751  
Telephone Number ( 512 ) 374-1926 Fax Number ( 512 ) 271-2578  
Email Address Bradley.J.Bartkowiak@chase.com

5. Company's Name Twin Liquors  
Name and Title of Contact Sales  
Present Address 5639 Airport Blvd.  
City, State, Zip Code Austin, TX 78751  
Telephone Number ( 512 ) 442-8395 Fax Number ( 512 ) 442-8594  
Email Address orders@twinliquors.com

Solicitation No. RFP TVN0048

Section 0835: Non-Resident Bidder Provisions

Company Name Lone Star Riverboat, Inc.

- A. Bidder must answer the following questions in accordance with Vernon's Texas Statutes and Codes Annotated Government Code 2252.002, as amended:

Is the Bidder that is making and submitting this Bid a "Resident Bidder" or a "non-resident Bidder"?

Answer: Resident Bidder

- (1) Texas Resident Bidder- A Bidder whose principle place of business is in Texas and includes a Contractor whose ultimate parent company or majority owner has its principal place of business in Texas.  
(2) Nonresident Bidder- A Bidder who is not a Texas Resident Bidder.

- B. If the Bidder is a "Nonresident Bidder" does the state, in which the Nonresident Bidder's principal place of business is located, have a law requiring a Nonresident Bidder of that state to bid a certain amount or percentage under the Bid of a Resident Bidder of that state in order for the nonresident Bidder of that state to be awarded a Contract on such bid in said state?

Answer: \_\_\_\_\_ Which State: \_\_\_\_\_

- C. If the answer to Question B is "yes", then what amount or percentage must a Texas Resident Bidder bid under the bid price of a Resident Bidder of that state in order to be awarded a Contract on such bid in said state?

Answer: \_\_\_\_\_

Solicitation No. RFP TVN0048

Subject: Request for Proposal TVN0048  
Excursion Boat Operation on Lady Bird Lake

**A. Part 1-Business Organization:**

Name:

Lone Star Riverboat, Inc

P. O. Box 5874

Austin, Texas 78763

Principal: Michael K. Pearce, President

Office Address: 1400 West 41<sup>st</sup> Street

Austin, Texas 78756

Mailing Address: Lone Star Riverboat, Inc

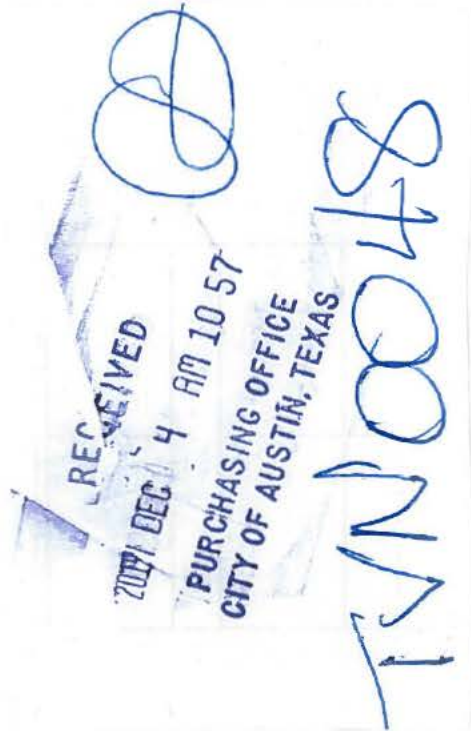
P. O. Box 5874

Austin, Texas 78763

Docking Location: Located on the south shore of Lady Bird Lake, just west of the Hyatt Hotel  
just east of the South First Street Bridge.

Lone Star Riverboat, Inc is a corporation, incorporated on May 28, 1987  
in the State of Texas. Charter number 1039897. All shares are owned by  
Michael K. Pearce (Proposer).

- i. Proposer is not acquiring any other business entity.
- ii. The business is not for sale or involved in any transaction to currently expand or involved in any pending litigation or claims against Proposer that would affect proposer's performance of managing the Concession.



iii. Proposer has no relationship with any employee or officer of the City of Austin and Austin Parks and Recreation Department.

iv. Lone Star Riverboat, Inc has demonstrated financial capability by carrying out and operating a highly professional and quality service excursion boat operation for over twenty seven years. Lone Star Riverboat, Inc and Michael K Pearce both have an A plus financial rating. I have already invested approximately \$800,000 in the start-up and continued operation of Lone Star Riverboat Inc. If our proposal is accepted we will be required to invest an addition \$200,000-\$400,000. We have a clear title on all vessels and equipment. In the proposal you will find our current balance and average account balance of our checking, savings and our \$70,000 line of credit account which is at \$0 balance due. Also included is a letter from Brad Bartkowiak, Assistant Vice President with Chase Bank stating that we have maintained a top tier account with Chase Bank since 1988. I, Michael K. Pearce, personally and Lone Star Riverboat, Inc maintain an A plus credit rating.